IN THE SUPREME COURT OF THE UNITED STATES

FRANCIS RICK FERRI,
Petitioner

vs.

DANIEL ACKERMAN,
Respondent

No. 78-5981

On Petition for Writ of Certiorari to
the Supreme Court of Pennsylvania

BRIEF OF RESPONDENT IN OPPOSITION

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Opinions Below

The opinion of the Supreme Court of Pennsylvania in this case is published in 394 A.2d 553 (Pa. 1978). A copy of that opinion is attached to this brief.

Question Presented

Whether a lawyer appointed to represent an indigent defendant in a federal criminal case is immune from civil liability in a state malpractice action brought by his own client.

Statement of the Case

This case is a state malpractice action by a dissatisfied criminal defendant against his defense lawyer.

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The trial court of Westmoreland County, Pennsylvania, sitting en banc, sustained defendant's demurrer, and dismissed the complaint. The Superior Court of Pennsylvania affirmed the trial court per curiam. The Supreme Court of Pennsylvania also affirmed the dismissal of the complaint. Ferri's Petition for Writ of Certiorari seeks review of the decision of the Pennsylvania Supreme Court.

The following facts are stated in the complaint. Plaintiff was named in a criminal indictment in the United States District Court for the Western District of Pennsylvania. He was indigent. Defendant Ackerman was appointed as criminal defense counsel to represent plaintiff. The appointment was made under the Criminal Justice Act.

The complaint then alleged a long series of negligent acts on the part of the defense counsel (both acts of omission and commission) at the pre-trial proceedings and at the jury trial. The allegations are set out in great detail in 68 separate paragraphs. They all relate to the technical aspects of the management of the criminal defense, and generally complain that defendant refused to follow plaintiff's instructions.

The complaint also sets forth that plaintiff was serving a prison term that had 8 more years to run, and that he is aggrieved by the additional imprisonment that would result from the sentencing in the criminal case involved. He

seeks "punitive and pecuniary damages" of $5,000,000 and "double and contingent damages" of $600,000.

Plaintiff originally joined as plaintiffs his former wife, Lorraine C. Ferri, and his 3 children. Lorraine C. Ferri filed a document declining to be a plaintiff and stating that she did not wish "to subject my three children to such an abhorrent action."

Plaintiff also filed an amended complaint briefly alleging in general terms "Malpractice and Breach of Contract".

Defendant Ackerman filed preliminary objections to both the original complaint and the amended complaint. The objections were in the nature of a demurrer and raised the question of jurisdiction.

The court en banc sustained the demurrer and dismissed the complaint, holding that defendant was immune from civil liability.

The Superior Court of Pennsylvania affirmed the order of the lower court in a per curiam opinion.

The Supreme Court of Pennsylvania granted Ferri's petition for allowance of appeal and affirmed the dismissal of the complaint, holding that Ackerman was immune from civil liability.

Summary of the Argument

A lawyer appointed under the Criminal Justice Act to represent an indigent defendant in a federal criminal case

is immune from tort liability. The rule of immunity is based upon case law and compelling public policy considerations. It permits the criminal defense lawyer utmost freedom in efforts to secure justice for his clients. Any opposite rule would discourage lawyers from representing indigent defendants.

Argument

I.

The Supreme Court of Pennsylvania held in this case that a lawyer appointed under the Criminal Justice Act to represent an indigent defendant in a federal criminal case is immune from civil liability in a state action brought by a dissatisfied client. The Pennsylvania court looked to federal law to determine the existance and extent of the immunity.

The Supreme Court of the United States recently reviewed the doctrine of absolute immunity for participants in judicial proceedings, and held that such immunity is properly based on sound reasons of public policy. Butz v. Economou, 46 L.W. 4952 (June 29, 1978). While holding that some federal executive officials are entitled only to qualified immunity, it said, as to those involved in the judicial process:

> "...[C]ontroversies sufficiently intense to erupt in litigation are not easily capped by judicial decree. The loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus. .....Absolute immunity is thus necessary to

> assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation." 46 L.W. at 4961. (Emphasis supplied.)

All persons involved in the judicial process must be free to act without fear of liability in a civil suit. Judges must be independent to render decisions without apprehension of suit from disappointed parties. Criminal defense lawyers must be allowed to provide a vigorous defense to persons accused of crime without diverting their energies to protecting themselves from potential personal liability.

Two decisions specifically hold that court-appointed counsel in federal criminal cases are immune from civil liability. Sullens v. Carroll, 446 F.2d 1392 (5th Cir. 1971); Jones v. Warlick, 364 F.2d 828 (4th Cir. 1966).

In the Sullens case, 446 F.2d at 1393, the Fifth Circuit stated:

> "The court below awarded summary judgment on grounds that court-appointed counsel for defendants in federal criminal cases are immune from suit the same as federal officials are. The Fourth Circuit so held in Jones v. Warlick, 4th Cir. 1966, 364 F.2d 828, for reasons more fully stated in the comprehensive unpublished opinion of Circuit Judge J. Spencer Bell, sitting

by designation. We have examined the authorities cited in those opinions...and we agree that the immunity doctrine is applicable."

See also O'Brien v. Colbath, 465 F.2d 358, 359 (5th Cir. 1972).

Jones v. Warlick, supra, 364 F.2d 828, is a Fourth Circuit case specifically holding that a court-appointed lawyer in a federal criminal case is immune from civil liability. There, a federal prisoner sued a judge, an F.B.I. agent, and his own court-appointed lawyer. The per curiam opinion found all 3 immune and affirmed the trial court based upon an unpublished opinion of Circuit Judge J. Spencer Bell sitting in the district court by special designation. (A copy of the unpublished opinion is attached as an appendix to this brief). Judge Bell held, that the attorney appointed by the court to represent an indigent defendant in a federal criminal case was a federal officer and immune from civil liability. He cited Barr v. Matteo, 360 U. S. 564, 569, 3 L.Ed. 2d 1434, 79 S.Ct. 1335 (1959) and 8 other cases.

Several civil rights cases[1] have considered the immunity of public defenders from tort liability.

[1]Actions by criminal defendants against their own lawyers are frequently brought under the Civil Rights Act which provides remedies for deprivation of constitutional rights by persons acting under color of state law. 42 U.S.C.A. §1983. The sweeping language of the Civil Rights Act making "every person" subject to such liability has been held not to abrogate common law immunity accorded to the actions of certain persons, especially those involved in the judicial process. Tenney v. Brandhove, 341 U.S. 367, 376, 95 L.Ed. 1019 (1951) (legislators); Pierson v. Ray, 386 U.S. 547, 554-555, 18 L.Ed. 2d 288 (1967) (judges);

In Brown v. Joseph, 463 F.2d 1056, 1048, 1059 (3d Cir. 1972), cert. den. 412 U.S. 950 (1973), the Third Circuit held an Allegheny County Public Defender immune of civil liability. In a well-reasoned opinion, the court said specifically:

"... a County Public Defender, created under the Pennsylvania statute, enjoys immunity from liability."

The Third Circuit's rationale included the following:

"... To subject this defense counsel to liability, while cloaking with immunity his counterpart across the counsel table, the clerk of the court recording the minutes, the presiding judge, and counsel of a co-defendant, privately retained or court-appointed, would be to discourage recruitment of sensitive and thoughtful members of the bar."

New Jersey public defenders were also held immune

and Imbler v. Pachtman, 424 U.S. 409, 424, 47 L.Ed. 2d 128, 140 (1976) (state prosecuting attorney). Consequently, civil rights cases provide good authority for determining the immunity of specified officials from tort liability under the common law, Imbler v. Pachtman, supra, 47 L.Ed.2d at 137, inasmuch as an official who is immune at the common law is also immune under the Civil Rights Act.

from suit in a later Third Circuit case reaffirming Brown v. Joseph. Waits v. McGowan, 516 F.2d 203, 205 (3d Cir. 1975).

A criminal defendant sued the public defender representing him in the Seventh Circuit case of John v. Hurt, 489 F.2d 786, 788 (7th Cir. 1973). The court there held the defense lawyer immune even if incompetency could be proved. The court said:

> "Assuming, however, that defendant could be deemed to be acting under color of state law, and allowing for the possibility that plaintiff's proof might demonstrate such imcompetency as to amount to deprivation of sixth amendment rights, we think that, as a matter of law, defendant is immune from liability for damages, and plaintiff's complaint must fail."
>
> (emphasis supplied.)

In Minns v. Paul, 542 F.2d 899 (4th Cir. 1976), the Fourth Circuit granted absolute immunity to a court-appointed criminal defense attorney in an action brought by his own client. The court relied on the reasoning of the Third Circuit in Brown v. Joseph, 463 F.2d at 1048-49. The Minns case also noted that indigent defendants frequently commence non-meritorious proceedings:

> "...[I]ndigents more frequently attempt to litigate claims which are patently without merit than do non-indigent parties." 542 F.2d 899, 902.

Resentment of unsuccessful litigants leaves an attorney "peculiarly vulnerable", and the court observed, in keeping with the Imbler decision:

> "Unless immunity is absolute, an attorney in Paul's position would not be totally free to exercise his best judgment in representing his client because he would be constrained to weigh every decision in terms of potential liability."

The Ninth Circuit case of Miller v. Barilla, 549 F.2d 648 (9th Cir. 1977), accorded absolute immunity to a deputy public defender at the suit of his client. The Miller case adopted much of the reasoning of the Fourth Circuit in the Minns decision.

The Seventh Circuit spoke of qualified immunity for the criminal defense lawyer in John v. Hurt, 489 F.2d 786 (7th Cir. 1973), but that case was decided before the Imbler holding dictated the grant of absolute immunity. The Seventh Circuit, after Imbler, holds that a criminal defense lawyer is entitled to absolute immunity. Caruth v. Geddes, 443 F.Supp. 1294 (1978); Robinson v. Bergstrom,

F.2d (7th Cir. June 13, 1978). (The Robinson case contains a thorough review of the law of absolute immunity for the criminal defense lawyer.)

In Walker v. Kruse, 484 F.2d 802 (7th Cir. 1973), the court considered a diversity malpractice action brought by a prisoner against the court-appointed lawyer designated to assist him in a state criminal case. The Seventh Circuit was convinced that the Illinois courts would dismiss the complaint for a number of reasons; one of which was that Illinois might require an allegation of innocence, and that plaintiff did not allege his innocence. The Walker case then dismissed the complaint against the defense lawyer, and made this observation on the defense of immunity:

> "Moreover, there are strong reasons of pclicy which might persuade the Illinois courts to hold that a lawyer, who has been appointed to serve without compensation in the defense of an indigent citizen accused of crime, should be immune from malpractice liability." 484 F.2d at 804.

Finally, Morrow v. Igleburger, 67 F.R.D. 675, 681 (S.D. Ohio, W.D. 1974), specifically held public defenders immune:

> "...The protection afforded by the judicial immunity doctrine has also been specifically extended to public defenders."

The court dismissed the claim against the defense lawyers for failure to state a claim upon which relief can be granted. 67 F.R.D. at 682.

The result reached under Pennsylvania law is the same. The recent decision of the Superior Court in Reese v. Danforth, decided per curiam, 241 Pa. Superior Ct. 604, 360 A.2d 629 (1976), affirmed the decision of the Lancaster County Common Pleas court which held that public defenders "are immune from liability for damages".

The authority of the cases in this section compel the conclusion that defendant Ackerman, appointed under the Criminal Justice Act to represent an indigent criminal defendant, is immune from tort liability.[2] His demurrer was properly sustained.

II

The Criminal Defense Lawyer Must Be Immune From Tort Liability To Permit Him Utmost Freedom In Efforts To Secure Justice for His Clients; the Rule of Immunity Is Also Necessary To Encourage Lawyers To Accept Assignment

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[2] "The rule of absolute immunity from civil liability for the criminal defense lawyer is firmly implanted in the emerging case law." Nakles, "Criminal Defense Lawyer: The Case for Absolute Immunity from Civil Liability." 81 Dick. L. Rev. 229, 234 (1977).

To Represent Indigent Defendants

Important public policy considerations dictate that a criminal defense lawyer appointed to represent an indigent client be immune from tort liability at the hands of his client. The policy is well-founded in reason and is necessary to the effective and fair administration of criminal justice.

The role of the defense lawyer, perhaps more than the judge or the prosecutor, requires freedom of action. He must be free to provide a vigorous and fearless defense of those accused of crime. Often the courtroom climate is hostile to his efforts when he represents an unpopular client. As he exerts every effort to provide adequate representation required by the Constitution, he should not be called upon to measure his words in relation to the personal consequences of a damage suit from an unsatisfied client.

It is a salutory public policy that those accused of crime should have proper representation regardless of their wealth or poverty. This policy would be seriously undermined if defense counsel were subjected to potential tort liability arising out of the decisions made in the conduct of the defense. If even a portion of his energies were diverted from the important task of defending his

client to a consideration of his own possible liability, the client would receive a defense less effective than that to which he is entitled.

Finally, and far more important, if a damage suit could be visited upon a court-appointed lawyer from any disgruntled client, who would serve as appointed counsel?

Without the rule of immunity for court-appointed counsel, courts would find many effective lawyers unwilling to undertake the defense of indigent clients. That would hamper the effective administration of the criminal justice system. Indigents accused of crimes would be prejudiced by the lack of effective counsel to represent them, and the public would suffer the harm.

A district court in Wisconsin recently held that an attorney might be liable for malicious use of garnishment proceedings because such liability in no way chills his duty to represent his client with zeal. U. S. General, Inc. v. Schroeder, 400 F.Supp. 713, 717 (E.D. Wisc. 1975). But even there, the court recognized the public policy need for immunity for lawyers:

> "Despite the foregoing, it is clear that as a general proposition, attorneys are held to be immune from civil liability under 42 U.S.C. §1983, even if their clients

are not. [Citing cases] The Court recognizes that this principle of immunity is grounded upon critical social considerations, for, if an attorney must work in constant fear of civil liability, it is the rights of the public that will suffer. Any such threat of liability visits an obvious chilling effect upon the attorney's enthusiasm to vigorously defend his client's position. [Case cited] The remedies guaranteed by the Civil Rights Act are not to be invoked so as to create a conflict between the attorney's duties to protect himself and to zealously represent his client. Ehn v. Price, 372 F.Supp. 151 (N.D. Ill. 1974). As a matter of public policy, the attorney must not be placed in a position where he is compelled to gamble on the outcome of a case, with his own personal liability hanging in the balance."

The cases which speak in terms of the "chilling effect" of potential tort liability on the tactics of defense counsel understand fully the practical result of withholding immunity from the criminal defense lawyer. See Brown v. Joseph, supra, 463 F.2d at 1049; John v. Hurt,

supra, 489 F.2d at 788.

In Brown v. Joseph, supra, 463 F.2d 1046, 1048-1049 (3d Cir. 1972), Judge Aldisert extended the judicial immunity which protected judges and prosecutors to defense counsel as well. He reasoned that if "free exercise of professional discretion" applied to immunize prosecutors, it applied with equal force to counsel for the accused. He held:

> "There are other considerations of public policy. First, there is the desirability of encouraging able men and women to assume Public Defender roles. To subject this defense counsel to liability, while cloaking with immunity his counterpart across the counsel table, the clerk of court recording the minutes, the presiding judge, and counsel of a co-defendant, privately retained or court appointed, would be to discourage recruitment of sensitive and thoughtful members of the bar...To deny immunity to the Public Defender and expose him to this potential liability would not only discourage recruitment, but could conceivably encourage many experienced public defenders to reconsider present positions."

Immunity from civil tort liability for the criminal defense lawyer does not mean that he operates outside the law and free of its rules. He is still subject to disciplinary procedures by bar associations, and to criminal process for actions amounting to crimes as defined by criminal statutes. Imbler v. Pachtman, supra, 47 L.Ed. 2d 128, 143 (1976).

Further, the criminal defendant is not left without an adequate legal remedy:

> "Vindication of allegedly invaded federal rights may be aserted by direct appeal, by state post conviction remedies, and by federal habeas corpus petition." Brown v. Joseph, supra, 463 F.2d 1046, 1049 (3d Cir. 1972).

In the present case, if Plaintiff Ferri were correct that he was given ineffective assistance of counsel, he would get a new trial for that reason. Since he was serving the final 8 years of a 10 year term at the time of his conviction involved here, obviously he will have suffered no damage from Mr. Ackerman's representation.

The Supreme Court of the United States recently held a state prosecutor absolutely immune from an action

for damages for wrongful prosecution and imprisonment, even where the prosecutor knowingly used perjured testimony, and deliberately withheld exculpatory information. Imbler v. Pachtman, supra, 424 U.S. 409, 426, 47 L.Ed. 2d 128, 141 (1976). Most of the Supreme Court's policy reasons for prosecutorial immunity applied with equal wisdom to justify the immunity of defense counsel. For example, the Court reasoned:

> "Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence." (Emphasis supplied.)

Only the immunity issue has been argued in this Brief. Respondent does not waive the other arguments made in the Supreme Court of Pennsylvania.

Conclusions

The Petition for Writ of Certiorari should be denied. The opinion of the Supreme Court of Pennsylvania simply followed federal law in determining that

Ackerman was immune from civil liability.

There are no special or important reasons for granting the petition.

Respectfully submitted,

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Certificate of Service

I hereby certify that I served a copy of the Brief for Respondent in Opposition on petitioner Francis Rick Ferri, P. O. Box 1000, Lewisburg, Pa. - 17837, by ordinary mail, sent postage prepaid from Latrobe, Pennsylvania, on February 2, 1979.

Ned J. Nakles

Ned J. Nakles
Counsel for Respondent

Dated:

February 2, 1979

THE OPINION IN FERRI V. ACKERMAN, 394 A.2d 553,
CAN BE FOUND IN THE SEPARATE APPENDIX VOLUME.

APPENDIX

APPENDIX

(Unpublished opinion; affirmed 364 F.2d 828)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Civil No. 2006

OTTIS MAYO JONES,
Plaintiff

vs.

WILSON WARLICK,
GORDON S. CARR
ARTHUR GOODMAN, JR.,
Defendants

ORDER GRANTING SUMMARY JUDGMENT
[Affirmed 364 F.2d 828]

The plaintiff, Ottis Mayo Jones, has filed with this court what he styles a "Petition for Declaratory Judgment"[1] seeking to recover $200,000.00 in damages from the three defendants—United States District Judge Wilson Warlick, FBI Agent Gordon S. Carr, and Attorney Arthur Goodman, Jr.—

[1] Jurisdiction is based upon the diversity of the citizenship of the litigants and the existence of the requisite amount in controversy.

whom he professes to sue as individuals and not as officers or agents of the United States. The gist of Jones' complaint is that the defendants "knowingly and willfully conspired to deprive this Petitioner [of] his Constitutional rights to a fair trial, to Counsel of his choice and to the immunity guaranteed by the Constitution of the United States . . .," with the result that he was "railroaded" into the federal penitentiary at Atlanta, Georgia, where he is presently serving a sentence of seven years for violating 18 U.S.C.A. §2312. In due course counsel for the defendants filed a motion (accompanied by supporting affidavits) requesting that the complaint be dismissed under Rule 12(b) of the Federal Rules of Civil Procedure because it failed to state a claim upon which relief could be granted, or, in the alternative, that summary judgment under Rule 56 be entered in the defendants' favor. After a careful consideration of the relevant authorities, particularly those cited by the plaintiff, it is the opinion of this court that the motion for summary judgment should be granted.

Despite the plaintiff's insistence that he is suing them as individuals, the fact remains that two of these defendants are United States governmental officials and the third defendant was acting as an officer of a federal court when he (at the request of the court) represented Jones on the criminal charges which had been brought against him. It is settled law that federal public officials are not subject to civil suit for acts performed by them in the course of their official duties. *Barr v. Matteo*, 360

U.S. 564, 569-76[2] (1959); *Howard v. Lyons*, 360 U.S. 593, 597-98 (1959); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872); *Holmes v. Eddy*, 341 F.2d 477, 479-80 (4 Cir. 1965); *Ove Gustavsson Contracting Co. v. Floete*, 299 F.2d 655, 658-59 (2 Cir. 1962), *cert. denied*, 374 U.S. 827 (1963); *Gregoire v. Biddle*, 177 F.2d 579, 580-81 (2 Cir. 1949), *cert. denied*, 339 U.S. 949 (1950); *Jones v. Kennedy*, 121 F.2d 40, 42 (D.C. Cir.), *cert. denied*, 314 U.S. 665 (1941); *Cooper v. O'Connor*, 99 F.2d 135, 138 (D.C. Cir.), *cert. denied*, 305 U.S. 643 (1938); *Yaselli v. Goff*, 12 F.2d 396 (2 Cir. 1926), *aff'd per curiam*, 275 U.S. 503 (1927); *Developments in the Law—Remedies Against the United States and Its Officials*, 70 Harv. L. Rev. 827, 833-38 (1957). In the *Bradley* case, the civil action for damages was against a judge of a court in the District of Columbia, and in *Yaselli*, the defendant was a Special Assistant to the Attorney General, a position somewhat analogous to that of defendant Goodman in the instant proceeding.[3] Citing the *Yaselli* case in his opinion for the majority in *Barr v. Matteo*, supra, Mr. Justice Harlan expressly stated that the immunity which judges enjoy "extends to other officers of government whose duties are *related to the judicial process.*" 360 U.S. at 569. (Emphasis added.)

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[2] These pages in the *Barr* opinion contain a statement of the rationale of the immunity doctrine.

[3] Both Goff and Goodman were appointed for the limited purpose of participating in specified judicial proceedings.

The duties of all three of the present defendants, clearly insofar as Jones was concerned, were related to the judicial process.

Given the settled rule of law, only if the allegedly wrongful actions were manifestly and palpably beyond the scope of the defendants' authority as federal officials could the plaintiff prevail. It is not enough to contend, as Jones has done in this case, that since they are not authorized to commit wrongful acts, a complaint charging federal officials with having engaged in improper conduct makes the immunity doctrine inapplicable. A similar contention was presented to the Second Circuit in *Ove Gustavsson Contracting Co. v. Floete*, 299 F.2d 655 (1962), *cert. denied*, 374 U.S. 827 (1963). The plaintiff there was complaining about certain allegedly false reports made by officials of the General Services Administration about the manner in which he had performed a construction contract for the Government. Anticipating the immunity defense, the plaintiff asserted that it did not apply because the Government could not authorize the tortious behavior which had allegedly occurred and the defendants "did not have the authority to act to injure and damage" him. The court, after declaring that the plaintiff's construction would defeat the whole immunity doctrine, stated that "what is meant by saying that the officer must be acting within his power cannot be more than that the occasion must be such as would have justified the act . . . ." 299 F.2d at 659, quoting from Judge Learned Hand's opinion in *Gregoire v. Biddle*, 177

F.2d 579, 581 (2 Cir. 1949), *cert. denied*, 339 U.S. 949 (1950). This same thought was expressed in slightly different words in *Barr v. Matteo*, 360 U.S. 564, 575 (1959), where the Supreme Court said that "the fact that the action here taken was within the outer perimeter of petitioner's line of duty is enough to render the privilege applicable. . . ." Likewise, the Fifth Circuit in *Norton v. McShane*, 332 F.2d 855 (1964), *cert. denied*, 380 U.S. 981 (1965), in discussing the "scope of authority" required for immunity to attach, said that all that is necessary is that the act complained of "have more or less connection with the general matters committed by law to the officer's control or supervision. . . ." 332 F.2d at 859, quoting from *Spalding v. Vilas*, 161 U.S. 483, 498 (1896). Every act about which Jones complains (either in the complaint or in any of the other documents appearing in the record) was at least colorably within the scope of the defendants' authority, as that phrase has been defined by the decided cases.

Jones also claims to be suing under 42 U.S.C.A. §1983 to redress the deprivation of due process which he alleges he suffered as the result of the actions of the three defendants. In support of this claim, he cites the Supreme Court's decision in *Monroe v. Pape*, 365 U.S. 167 (1961), on several occasions and quotes extensively from it. However, his reliance upon section 1983 and the decisions interpreting it is misplaced, for that statutory provision has been held applicable only to persons who, acting under color of a *state or territorial law*,

deprive citizens of rights secured to them by the Constitution and laws of the United States. *Wheeldin v. Wheeler*, 373 U.S. 647, 650 n.2 (1963); *Norton v. McShane*, supra at 862. The conduct of the present defendants was pursuant to *federal*, not state, authority.[4]

There being no genuine issue as to any material fact and it appearing that given the allegations in the plaintiff's complaint, the defendants are entitled to a judgment as a matter of law, the motion for summary judgment is granted.[5]

(s) J. Spencer Bell
Presiding Judge

August 24th, 1965

[4] In all his many extensive documents, the plaintiff refers to only one state statute, the North Carolina attachment statute, by which he contends that he was robbed of his money and other defense evidence. Certain money which the plaintiff had on his person and in a local bank account at the time he was arrested by defendant Carr was subsequently legally attached by *parties other than the present defendants*, and the proceeds in question were placed in the custody of the Clerk of the Mecklenburg County Superior Court for disposition pursuant to law. Furthermore, Jones' "robbery" claim has already been heard and rejected by this court (Judge Warlick presiding) at a pretrial hearing on a motion to suppress certain evidence and by the Fourth Circuit on Jones' direct appeal, *United States v. Jones*, 340 F.2d 599, 601 (1965), and it thus does not merit further judicial consideration.

[5] The plaintiff currently has pending some eight motions in this case. In view of his lack of success on the merits, the several motions are hereby denied.